

REMARKS

This Amendment is submitted in response to the Office Action dated January 25, 2007. In the Office Action, the Patent Office provisionally rejected Claims 1-87 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-110 of co-pending U.S. Patent Application Serial No. 10/447,099; Claims 1-114 of co-pending U.S. Patent Application Serial No. 10/449,292; Claims 1-139 of co-pending U.S. Patent Application Serial No. 10/449,312; Claims 1-82 of co-pending U.S. Patent Application Serial No. 10/760,604; and Claims 1-51 of co-pending U.S. Patent Application Serial No. 11/257,330. Further, the Patent Office rejected Claims 1-6, 8-13, 21-34, 44-51, 58-66 and 68-87 under 35 U.S.C. §102(b) as being anticipated by *Bergersen* (U.S. Patent No. 5,645,420); rejected Claims 14-17, 19 and 20 under 35 U.S.C. §102(b) as being anticipated by *Andrews* (U.S. Patent No. 4,591,341). Still further, the Patent Office rejected Claims 6, 42 and 66 under 35 U.S.C. §103(a) as being unpatentable over *Bergersen* in view of *Watson et al.* (U.S. Patent No. 5,328,362); rejected Claims 7, 18, 40 and 67 under 35 U.S.C. §103(a) as being unpatentable over *Bergersen* in view of *Andrews*; and rejected Claims 21-39, 41-43 and 52-57 under 35 U.S.C. §103(a) as being unpatentable over *Bergersen*.

Regarding the provisional rejection based on obviousness-type double patenting, Applicant submits that Claims 1-87 distinctly

define the present invention in view of the co-pending applications. The Patent Office admits the conflicting claims are not identical but contends Applicant merely re-arranges the order of the claimed elements and uses different wording. Applicant asserts that the subject matter of the pending claims of U.S. Serial Nos. 10/447,099; 10/449,292; 10/449,312; 10/760,604; and 11/257,330 is distinct from the subject matter of the pending claims of the present application.

U.S. Serial Nos. 10/447,099, 10/449,292 and 10/760,604 do not disclose ribs that guide one or more teeth of the user; U.S. Serial Nos. 10/447,099, 10/449,292, 10/449,312 and 10/760,604 do not disclose wedges that contact the teeth of the user; U.S. Serial Nos. 10/447,099, 10/449,292, 10/449,312 and 10/760,604 do not disclose a wire embedded within the base; U.S. Serial Nos. 10/447,099, 10/449,292, 10/449,312, 10/760,604 and 11/257,330 do not disclose an incisal edge that moves a tooth of the user; and U.S. Serial Nos. 10/447,099, 10/449,292, 10/449,312, 10/760,604 and 11/257,330 do not disclose a suction cup that adheres the device to the teeth of the user.

Thus, the co-pending applications each fail to disclose at least one element required by the current claims of this application. Therefore, Applicant asserts that Claims 1-87 should not have obviousness-type double patenting rejections with co-pending claims of U.S. Serial Nos. 10/447,099; 10/449,292;

10/449,312; 10/760,604; and 11/257,330. If the Examiner maintains this rejection, Applicant will file a Terminal Disclaimer upon determination that the claims are otherwise allowable.

In the Office Action, the Patent Office rejected Claims 1-6, 8-13, 21-34, 44-51, 58-66 and 68-87 under 35 U.S.C. §102(b) as being anticipated by *Bergersen*. More specifically, the Patent Office alleges that *Bergersen* discloses a dental appliance having a generally U-shaped base, a flat occlusal surface, a first wall, a second wall and a slot whose width increases from the front to the rear.

Independent Claim 1, as amended, requires that the slot extends along the length of the base from the first end of the base to the second end of the base. Further, Claim 1 requires a wire embedded within the base wherein the wire clasps one of the teeth. Still further, Claim 1 requires that the width of the slot increases from a first portion of the slot to a second portion of the slot wherein the first portion of the slot is shaped to contact a front of the mouth wherein the second portion of the slot is shaped to extend rearward in the mouth. Moreover, Claim 1 requires that the second portion of the slot is shaped to move the canine type of teeth when the base is worn by the user.

Independent Claim 8, as amended, requires a generally U-shaped base having a length defined between a first end and a second end wherein the base has a first socket shaped to receive the canine

teeth by contacting the canine teeth on an outer side of the canine teeth and on an inner side of the canine teeth wherein the inner side of the canine teeth is in a position opposite to the outer side wherein the socket has an occlusal surface. Further, Claim 8 requires wedges formed within the first socket wherein each of the wedges extend outward with respect to the occlusal surface of the first socket to form an apex which is shaped to extend toward a canine tooth and to contact the canine tooth. Still further, Claim 8 requires that the wedges contact an interproximal area of the canine tooth wherein the interproximal area is located between the canine tooth and a second tooth and further wherein the wedge moves the canine tooth when the base is worn by the user.

Independent Claim 21, as amended, defines dental appliances adapted to be worn consecutively by a user to treat a malocclusion. Claim 21 requires a first device having a generally U-shaped base having a flat occlusal surface wherein the flat occlusal surface of the first device is shaped to contact the teeth of the user. Further, Claim 21 requires that a first portion of the first device is constructed from a first material and a second portion of the first device is constructed from a second material softer than the first material wherein the first portion of the first device contacts a first set of teeth and the second portion of the first device contacts a second set of teeth. Still further, Claim 21 requires a second device having a generally U-shaped base having a

flat occlusal surface wherein the flat occlusal surface of the second device is shaped to contact teeth of the user and wherein the second device is sized larger than the first device. Moreover, Claim 21 requires that a first portion of the second device is constructed from a first material and a second portion of the second device is constructed from a second material softer than the first material wherein the first portion of the second device contacts the first set of teeth and the second portion of the second device contacts the second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth.

Independent Claim 27, as amended, requires that the first device is sized to treat a first type of dentition and that the second device is sized to treat a second type of dentition wherein the first type of dentition and the second type of dentition are different and further wherein at least one tooth of the second type of dentition is a permanent tooth. Further, Claim 27 requires that the first device and the second device are shaped to correct the malocclusion. Still further, Claim 27 requires that the first device is constructed from a first material and the second device is constructed from a second material wherein the first material is softer than the second material.

Independent Claim 44, as amended, requires that the socket is sized based on anatomical standards for teeth. Further, Claim 44

requires that at least one socket is shaped to receive canine type teeth regardless of anatomical variations of the canine type teeth of the user. Still further, Claim 44 requires a wire embedded within the base wherein the wire extends vertically from the occlusal surface toward the teeth when the base is worn by the user wherein the wire is shaped to contact a labial side of one of the teeth.

Independent Claim 58, as amended, requires the first area is shaped to receive the canine teeth regardless of anatomical variations of the canine type teeth of the user. Further, Claim 58 requires an incisal edge within the first area of the occlusal surface wherein the incisal edge inclines outward with respect to the occlusal surface and is sized to contact the canine tooth. Still further, Claim 58 requires that the incisal edge is shaped to move the canine tooth. Moreover, Claim 58 requires that a first portion of the device is constructed from a first material and contacts a first set of teeth and a second portion of the device is constructed from a second material softer than the first material and contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth wherein the second portion of the device has the incisal edge.

Independent Claim 63, as amended, requires that the slot extends along the length of the base from the first end of the base to the second end of the base. Further, Claim 63 requires that the

slot has a first portion, a second portion, a third portion and a fourth portion wherein the width continuously increases from the first portion to the fourth portion. Still further, Claim 63 requires that the first portion is sized to receive an incisor type of tooth wherein the fourth portion is sized to receive a molar type of tooth of the user. Moreover, Claim 63 requires that the second portion and the third portion are shaped to contact teeth located between the incisor type of tooth and the molar type tooth wherein the slot corrects a malocclusion of the teeth. Wedges formed within the slot extend outward with respect to the occlusal surface to form an apex which contacts teeth.

Independent Claim 68, as amended, requires that the first socket is sized to receive a canine type tooth wherein the first socket separates the canine type tooth from teeth which are not canine type of teeth. Further, Claim 68 requires that the first socket moves the canine type tooth when the base is worn by the user. Still further, Claim 68 requires a wire embedded in the base wherein the wire extends from the base and contacts the canine type tooth.

Independent Claim 74, as amended, requires that the socket is shaped to move the canine type tooth from a first position to a second position wherein the second position is closer to a front of the mouth of the user than the first position when the base is worn by the user. Further, Claim 74 requires a liner in one of the

sockets wherein the liner prevents movement of the base away from the teeth when the base is worn in the mouth of the user. Still further, Claim 74 requires wedges formed on the base wherein the wedges contact an interproximal area of one of the teeth wherein the interproximal area is located between the teeth wherein the wedge moves the tooth.

Independent Claim 79, as amended, requires that the rib is positioned to contact an interproximal area of at least one tooth of the user when the base is worn by the user wherein the interproximal area is located between a first tooth and a second tooth. Further, Claim 79 requires that a socket portion of the device is constructed from a first material and a second portion of the device is constructed from a second material harder than the first material. Still further, Claim 79 requires that the rib guides one or more teeth of the user toward a position correcting a malocclusion of the teeth of the user when the base is worn by the user.

Independent Claim 85, as amended, requires that the base is sized to correspond to the digital model wherein the digital model corresponds to the teeth of the user. Further, Claim 85 requires that at least one of the sockets is sized to receive a canine type tooth and to move the canine type tooth with respect to the teeth when the base is worn by the user. Still further, Claim 85 requires a wire embedded in the base wherein the wire extends from

an outer surface of one of the sockets wherein the wire contacts the first tooth.

Bergersen merely discloses superior and inferior tooth receiving troughs 22A, 24A which have a plurality of tooth sockets 22Aa, 22Ab, 22Ac, 22Ad. In addition, *Bergersen* merely discloses an upper lingual flange 26 having a plurality of slight recesses 40a, 40b, 40c, 40d, 40e. The Patent Office identified element 22 in *Bergersen* as the claimed wedge; however, element 22 does not meet the limitations of the wedge because element 22 does not extend from the socket or slot to contact an interproximal area of teeth. Element 22 of *Bergersen* forms the socket or slot for receiving teeth, and therefore does not disclose the additional element of a wedge within the slot or socket. The Patent Office identified element 104 in *Bergersen* as the claimed embedded wire; however, the element 104 does not meet the limitations of the embedded wire because the element 104 does not extend from the base to contact and/or clasp teeth. The wire of *Bergersen* is completely inside the appliance and helps the appliance maintain its shape. (See *Bergersen*, FIG. 14 and Col. 10, lines 4-10)

Nowhere does *Bergersen* disclose a wire embedded within the base wherein the wire clasps one of the teeth as required by amended Claim 1. Further, nowhere does *Bergersen* disclose that the width of the slot increases from a first portion of the slot to a second portion of the slot wherein the first portion of the slot is

shaped to contact a front of the mouth wherein the second portion of the slot is shaped to extend rearward in the mouth as required by Claim 1.

Nowhere does *Bergersen* disclose wedges formed within the occlusal surface as required by amended Claim 8. Furthermore, nowhere does *Bergersen* disclose that each of the wedges extend outward with respect to the occlusal surface of the first socket to form an apex which is shaped to extend toward a canine tooth and to contact the canine tooth as required by Claim 8. In addition, nowhere does *Bergersen* disclose that the wedges contact an interproximal area of the canine tooth as required by Claim 8.

Nowhere does *Bergersen* disclose that a first portion of the first device is constructed from a first material and a second portion of the first device is constructed from a second material softer than the first material as required by amended Claim 21. Further, nowhere does *Bergersen* disclose that the first portion of the first device contacts a first set of teeth and the second portion of the first device contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth as required by Claim 21.

Nowhere does *Bergersen* disclose that the first device is constructed from a first material and the second device is constructed from a second material wherein the first material is softer than the second material as required by amended Claim 27.

Nowhere does *Bergersen* disclose a wire embedded within the base wherein the wire extends vertically from the occlusal surface toward the teeth when the base is worn by the user wherein the wire is shaped to contact a labial side of one of the teeth as required by amended Claim 44.

Nowhere does *Bergersen* disclose an incisal edge within the first area of the occlusal surface wherein the incisal edge inclines outward with respect to the occlusal surface and is sized to contact the canine tooth as required by Claim 58. Further, nowhere does *Bergersen* disclose a first portion of the device is constructed from a first material and contacts a first set of teeth and a second portion of the device is constructed from a second material softer than the first material and contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth wherein the second portion of the device has the incisal edge as required by Claim 58.

Nowhere does *Bergersen* disclose that the slot has a first portion, a second portion, a third portion and a fourth portion wherein the width continuously increases from the first portion to the fourth portion as required by amended Claim 63. Further, nowhere does *Bergersen* disclose wedges formed within the slot wherein the wedges extend outward with respect to the occlusal surface to form an apex which contacts teeth as required by Claim 63. Still further, nowhere does *Bergersen* disclose that the second

portion and the third portion are shaped to contact teeth located between the incisor type of tooth and the molar type tooth wherein the slot corrects a malocclusion of the teeth as required by Claim 63.

Nowhere does *Bergersen* disclose that the first socket is sized to receive a canine type tooth wherein the first socket separates the canine type tooth from teeth which are not canine type of teeth as required by amended Claim 68. In addition, nowhere does *Bergersen* disclose a wire embedded in the base wherein the wire extends from the base and contacts the canine type tooth as required by Claim 68.

Nowhere does *Bergersen* disclose the socket is shaped to move the canine type tooth from a first position to a second position wherein the second position is closer to a front of the mouth of the user than the first position when the base is worn by the user as required by amended Claim 74. Further, nowhere does *Bergersen* disclose a liner in one of the sockets wherein the liner prevents movement of the base away from the teeth when the base is worn in the mouth of the user as required by Claim 74. Still further, nowhere does *Bergersen* disclose wedges formed on the base wherein the wedges contact an interproximal area of one of the teeth wherein the interproximal area is located between the teeth wherein the wedge moves the tooth as required by Claim 74.

Nowhere does *Bergersen* disclose that the rib is positioned to

contact an interproximal area of at least one tooth of the user when the base is worn by the user wherein the interproximal area is located between a first tooth and a second tooth as required by amended Claim 79. Further, nowhere does *Bergersen* disclose that the rib guides one or more teeth of the user toward a position correcting a malocclusion of the teeth of the user when the base is worn by the user as required by Claim 79. Still further, nowhere does *Bergersen* disclose wherein a socket portion of the device is constructed from a first material and a second portion of the device is constructed from a second material harder than the first material as required by Claim 79.

Nowhere does *Bergersen* disclose a wire embedded in the base wherein the wire extends from an outer surface of one of the sockets wherein the wire contacts the first tooth as required by amended Claim 85.

Therefore, *Bergersen* does not disclose the elements required by Claims 1, 8, 21, 27, 44, 58, 63, 68, 74, 79 and 85, as amended.

Under 35 U.S.C. §102(b), anticipation requires that a single reference discloses each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial", and one skilled in the art could supply the missing elements. *Structure Rubber*

Products Co. v. Park Rubber Co., 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

Since *Bergersen* fails to disclose the elements specifically defined in amended independent Claims 1, 8, 21, 27, 44, 58, 63, 68, 74, 79 and 85, Applicant asserts that the rejection of Claims 1-6, 8-13, 21-34, 44-51, 58-66 and 68-87 under 35 U.S.C. §102(b) has been overcome and should be withdrawn. Notice to that effect is requested.

In the Office Action, the Patent Office rejected Claims 14-17, 19 and 20 under 35 U.S.C. §102(b) as being anticipated by *Andrews*. More specifically, the Patent Office alleges that *Andrews* discloses a mouthpiece with suction cups.

Andrews merely teaches an orthodontic positioner with suction devices attached to interior walls of the positioner.

Independent Claim 14, as amended, requires a wire embedded within the base wherein the wire extends vertically from the base and contacts the first tooth. Nowhere does *Andrews* disclose a wire embedded within the base wherein the wire extends vertically from the base and contacts the first tooth as required by amended Claim 14. *Andrews* does not disclose an embedded wire and merely discloses a mouthpiece with a single opening in the appliance that does not separate teeth of a user.

Under 35 U.S.C. §102(b), anticipation requires that a single reference discloses each and every element of Applicant's claimed

invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the reference are "insubstantial", and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d. 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

Since *Andrews* fails to disclose the elements specifically defined in amended independent Claim 14, Applicant asserts that the rejection of Claims 15-17, 19 and 20 under 35 U.S.C. §102(b) has been overcome and should be withdrawn. Notice to that effect is requested.

In the Office Action, the Patent Office rejected Claims 6, 42 and 66 under 35 U.S.C. §103(a) as being unpatentable over *Bergersen* in view of *Watson et al.* More specifically, the Patent Office alleges that *Watson et al.* teach the construction of dental appliances of a first relatively rigid material and a second relatively soft resilient material.

On the contrary, *Watson et al.* merely teach a unitary plural-material, interocclusal dental appliance for use in connection with orthodontic/orthopedic treatment of the teeth and jaws of a patient's mouth. The appliance has a first region made from a first material that provides a relatively hard expanse with first and second surfaces and with the second surface contacting

the teeth. A second region is joined to the first region and is made from a second material that provides a relatively soft, persistently resilient enclosure.

Claim 6, as amended, requires that the second portion of the slot is constructed from the first material and the first portion of the slot is constructed from the second material.

Claim 42, as amended, requires a portion of the base that contacts the first tooth is constructed from the first material and a portion of the slot that does not contact the first tooth is constructed from the second material.

Claim 66, as amended, requires that a first section of the slot is constructed from the first material and a second section of the slot is constructed from the second material wherein the first section contacts different teeth than the second section.

Contrary to Applicants claimed invention, *Watson et al.* fail to teach or to suggest use of the different materials in sections that contact different teeth. *Watson et al.* merely teach use of different materials within the same socket, as different layers of the appliance. (See *Watson et al.*, FIG. 2A, elements 14 and 16). In addition, *Watson et al.* fail to teach or suggest elements of the present invention which are not taught by the '535 patent or *Bergersen*, taken singly or in combination, as required by amended independent Claims 1, 35 and 63 from which Claims 6, 42 and 66, respectively, depend.

Moreover, a person of ordinary skill in the art would never have been motivated to combine *Bergersen* with *Watson et al.* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention. A teaching, suggestion, or incentive must exist to make the combination made by Applicant. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

With the analysis of the deficiencies of *Bergersen* and *Watson et al.*, as enumerated above, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *Bergersen* with *Watson et al.* to

produce the claimed invention. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

Even assuming that one having ordinary skill in the art could somehow have combined the references applied by the Patent Office, the references still lack the novel features and the novel steps positively recited in independent Claims 1, 35 and 63. Accordingly, Applicant asserts that the rejection of Claims 6, 42 and 66 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

In the Office Action, the Patent Office rejected Claims 7, 18, 40 and 67 under 35 U.S.C. §103(a) as being unpatentable over *Bergersen* in view of *Andrews*. More specifically, the Patent Office alleges that *Andrews* teaches the use of small suction cups positioned in an orthodontic appliance.

Neither *Bergersen* nor *Andrews*, taken singly or in combination, teaches or suggests a wire embedded within the base wherein the wire clasps one of the teeth as required by amended Claim 1. Further, neither *Bergersen* nor *Andrews*, taken singly or in combination, teaches or suggests a wire embedded within the base wherein the wire extends vertically from the base and contacts the first tooth as required by amended Claim 14. Still further, neither *Bergersen* nor *Andrews*, taken singly or in combination, teaches or suggests a wire embedded within the base wherein the

wire extends vertically from a top surface of the second wall toward the teeth when the base is worn by the user wherein the wire is shaped to contact a labial side of a first tooth wherein the first tooth is an incisor type tooth as required by amended Claim 35. Moreover, neither *Bergersen* nor *Andrews*, taken singly or in combination, teaches or suggests that the second portion and the third portion are shaped to contact teeth located between the incisor type of tooth and the molar type tooth wherein the slot corrects a malocclusion of the teeth as required by amended Claim 63.

Andrews fails to teach or to suggest the elements of the present invention which are not taught by *Bergersen*, taken singly or in combination, as required by amended independent Claims 1, 14, 35 and 63 from which Claims 7, 18, 40 and 67, respectively, depend. Moreover, a person of ordinary skill in the art would never have been motivated to combine *Bergersen* with *Andrews* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). No reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *Bergersen* with *Andrews* to produce the claimed invention. Accordingly, the rejection of Claims 7, 18, 40 and 67 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

With respect to the rejection of Claims 21-39, 41-43 and 52-57

under 35 U.S.C. §103(a) as being unpatentable over *Bergersen*, the Patent Office alleges that merely providing two different sized mouthpieces would have been obvious to one of ordinary skill in the art, and positioning the wire at the surface of the mouthpiece to better position teeth would be obvious as well.

Independent Claim 35, as amended, requires a wire embedded within the base wherein the wire extends vertically from a top surface of the second wall toward the teeth when the base is worn by the user. Further, Claim 35 requires that the wire is shaped to contact a labial side of a first tooth wherein the first tooth is an incisor type tooth.

Independent Claim 52, as amended, requires providing an analysis means for the patient to analyze a position of one or more teeth within a mouth of the patient wherein a width of the mouth is measured by the analysis means. Further, Claim 52 requires displaying a tooth arrangement to which the patient compares the position of the one or more teeth distributing a dental appliance to the patient after the patient compares the position of the one or more teeth. Still further, Claim 52 requires distributing a dental appliance to the patient after the patient compares the position of the one or more teeth wherein a size of the dental appliance corresponds to the width of the mouth wherein the dental appliance is constructed from a first material and a second material wherein the first material is softer than the second

material wherein a first portion of the device is constructed from the first material and contacts a first set of teeth and a second portion of the device is constructed from a second material and contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth.

Bergersen fails to teach or suggest a first portion of the first device is constructed from a first material and a second portion of the first device is constructed from a second material softer than the first material as required by amended Claim 21. Further, *Bergersen* fails to teach or suggest that the first portion of the first device contacts a first set of teeth and the second portion of the first device contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth as required by Claim 21.

Bergersen fails to teach or suggest that the first device is constructed from a first material and the second device is constructed from a second material wherein the first material is softer than the second material as required by amended Claim 27.

Bergersen fails to teach or to suggest a wire embedded within the base wherein the wire extends vertically from a top surface of the second wall toward the teeth when the base is worn by the user as required by amended Claim 35. Further, *Bergersen* fails to teach or to suggest that the wire is shaped to contact a labial side of a first tooth wherein the first tooth is an incisor type tooth as

required by Claim 35.

Bergersen fails to teach or to suggest the dental appliance is constructed from a first material and a second material wherein the first material is softer than the second material wherein a first portion of the device is constructed from the first material and contacts a first set of teeth and a second portion of the device is constructed from a second material and contacts a second set of teeth wherein the first set of teeth and the second set of teeth are different sets of teeth as required by amended Claim 52.

Claims 2-7 depend from Claim 1; Claims 9-13 depend from Claim 8; Claims 15-20 depend from Claim 14; Claims 22-26 depend from Claim 21; Claims 28-34 depend from Claim 27; Claims 36-43 depend from Claim 35; Claims 45-51 depend from Claim 44; Claims 53-57 depend from Claim 52; Claims 59-62 depend from Claim 58; Claims 64-67 depend from Claim 63; Claims 69-73 depend from Claim 68; Claims 75-78 depend from Claim 74; Claims 80-84 depend from Claim 79; and Claims 86 and 87 depend from Claim 85. These claims are further believed allowable over the references of record since each sets forth additional structural elements and novel steps of Applicants' invention.

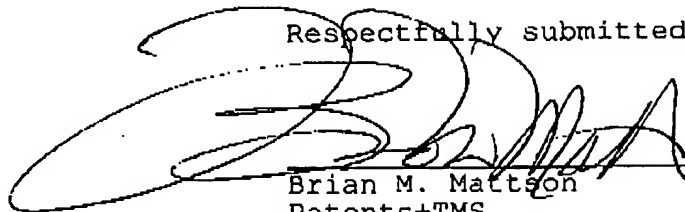
In view of the foregoing remarks and arguments, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is in condition for allowance. Further, Applicant submits that neither further search

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nor consideration would be necessitated by entry of this Amendment. Therefore, entry of this Amendment is proper and should be effected. If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant's request the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,



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CERTIFICATE OF TRANSMISSION

I hereby certify that this **Amendment After Final and Transmittal (in duplicate)** are being transmitted by facsimile to the U.S. Patent and Trademark Office (Fax. No. 571-273-8300) on March 7, 2007.



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